

P-407, 421/CP-86-526 ORDER DENYING REQUEST FOR RECONSIDERATION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of the Petition of
Certain Subscribers in the
Lindstrom Exchange for Extended
Area Service to the
Minneapolis/St. Paul
Metropolitan Calling Area

ISSUE DATE: May 11, 1993

DOCKET NO. P-407, 421/CP-86-526

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ORDER DENYING REQUEST FOR
RECONSIDERATION

PROCEDURAL HISTORY

On February 25, 1993, the Commission issued its ORDER APPROVING LOWER COST ALTERNATIVE, COST STUDIES AND RATES FOR POLLING in the above-captioned matter.

On March 8 and March 18, 1993, the Department of Public Service (the Department) filed a petition for reconsideration and supporting documents.

On March 29, 1993, GTE Minnesota (GTE) and US WEST Communications, Inc. (US WEST) filed replies to the Department's petition.

On April 12, 1993, the City of Delano (the City) filed comments. The City stated that it continued to support the Department's recommendations in this matter. Due to the length of these proceedings, however, the City requested that the Department's petition be denied so that subscriber polling could take place as soon as possible.

On April 26, 1993, the Greater Chisago Lakes Area Chamber of Commerce submitted a letter opposing the Department's petition for reconsideration.

The matter came before the Commission for consideration on April 27, 1993.

FINDINGS AND CONCLUSIONS

In its March 8, 1993 petition, the Department sought reconsideration of the following issues:

1. The Commission's determination that US WEST is not an affected telephone company in routes between the petitioning exchanges and non-US WEST metro exchanges;
2. The Commission's finding on US WEST's return on equity (ROE);
3. The Commission's adoption of base usage and stimulation factors for a lower cost alternative;
4. The extended area service (EAS) rate additives adopted by the Commission.

The Commission will consider these issues in turn.

I. The Affected Telephone Company Issue

1. Background

Subscribers in the Delano and Lindstrom exchanges sought EAS to the Twin Cities metropolitan calling area (the MCA). The Delano and Lindstrom exchanges are served by GTE, an independent local exchange company (ILEC). Some of the exchanges within the MCA are served by US WEST acting as a local exchange company (LEC) and some metro exchanges are served by non-US WEST ILECs. US WEST also serves as an interexchange carrier (IXC) between the petitioning exchanges and the metro exchanges served by ILECs.

2. The February 25, 1993 Order

In the February 25, 1993 Order, the Commission found that for proposed EAS routes to US WEST metro exchanges, US WEST is an affected telephone company for the purposes of the income neutrality provisions of the EAS statute. For EAS routes in which US WEST serves only as an IXC, US WEST is not an affected telephone company within the meaning of the statute.

3. Positions of the Parties

In its March 8, 1993 petition, the Department asked the Commission to reconsider its findings regarding US WEST's income neutrality status in routes it serves as an IXC. The Department noted that US WEST is a telephone company which combines LEC and interexchange toll carrier functions. Since local rates are set residually from toll rates, a finding regarding US WEST's toll operations will inevitably affect its local ratepayers. The Department asked the Commission to find that US WEST is affected

as a local telephone company on all EAS routes, whether acting as an IXC or as a LEC.

US WEST argued that there is no reason that US WEST's local and toll operations must be considered together when determining income neutrality. According to US WEST, it would be unfair to treat US WEST differently from other IXCs connecting ILEC exchange to ILEC exchange, simply because US WEST at other times serves as a LEC. Finally, US WEST argued that finding it an affected telephone company on routes it serves as an IXC would be inconsistent with Commission precedent.

4. Commission Analysis

The Commission finds that its treatment of US WEST in this proceeding is consistent with a long line of Commission decisions regarding the affected telephone company issue. The Department has failed to raise any arguments which would warrant departure from established Commission precedent.

The Commission first rejected the Department argument regarding the residual effect of income neutrality on the Company's local ratepayers in 1991 in the Hokah¹ case:

In actuality, [the Department] is not requesting the plain meaning of "affected telephone company" at all. Instead, its interpretation requires that the Commission add several words to the legislation. [The Department] would have section 3 (b) read as follows:

The Commission shall establish rates that are income neutral for each ~~affected telephone company~~ telephone company whose income would be affected by the installation of EAS.

Such an amendment to the statute, of course, may be made only by the legislature, not the Commission.

Hokah at pp. 5-6.

The Commission has expressly and consistently found that US WEST is not an affected telephone company when serving as a toll carrier in an ILEC to ILEC route. In the 1992 Monticello² EAS Order, for instance, the Commission stated:

¹ In the Matter of a Petition for Extended Area Service from the Hokah Exchange to the La Crosse, Wisconsin Calling Area, et al, Docket No. P-401/CP-89-951 (November 21, 1991).

² In the Matter of a Petition for Extended Area Service Between the Monticello Exchange and the Minneapolis/St. Paul Metropolitan Calling Area, Docket No. P-404, 421, 430, 407, 405, 520, 426/CP-89-1039 (December 4, 1992).

The fact that USWC's balance sheet would be improved by installing the proposed EAS and eliminating losing toll routes does not change the statutory language that indicates, as found in Hokah etc. that the only "affected telephone companies" are the LECs serving the petitioning and petitioned exchanges.

Monticello at p. 10

Finding that US WEST is not an affected telephone company on routes it serves only as a toll carrier is consistent with statutory language, articulated policy and Commission precedent. The Commission will deny the Department's request for reconsideration of this issue.

II. US WEST's Return on Equity

1. The February 25, 1993 Order

In the February 25, 1993 Order, the Commission accepted US WEST's proposed ROE of 13.4 percent as reasonable. The Commission did not find the Department's recommended ROE of 11.5 percent more acceptable.

2. Positions of the Parties

The Department argued that inclusion in the cost study of an ROE close to US WEST's incentive plan sharing threshold diminishes the effectiveness of the incentive plan. US WEST will not have an incentive to become more efficient.

The Department also argued that its proposed ROE was more reasonable than US WEST's and should therefore be used in the cost studies.

US WEST claimed that the Department is restating the same arguments it has unsuccessfully submitted in other dockets. The Commission has previously approved forward-looking, long run incremental cost studies, such as those proposed by US WEST, in EAS proceedings. According to US WEST, the Commission considered both the Company's and the Department's ROE and found US WEST's more reasonable.

3. Commission Analysis

A decision regarding the reasonableness of factors included in cost studies, such as cost of money, is clearly within the Commission's discretion. The Commission is said to act within its legislative powers when it decides such issues. Acting legislatively, the Commission

... weighs the facts presented and determines if proposed rates are just and reasonable. Acting legislatively, the Commission draws inferences and conclusions from proven facts to determine if the conclusion sought by the utility is justified.

In its legislative capacity, the Commission forms determinations such as the usefulness of a claimed item, the prudence of company decisions, and the overall reasonableness of proposed rates.

In the Matter of the Application of Peoples Natural Gas Company, a Division of Utilicorp United, Inc. for Authority to Increase Its Rates for Natural Gas Service in the State of Minnesota, Docket No. G-011/GR-92-132, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (February 22, 1993), at p. 5.

In this case, the Commission examined two sets of figures in deciding upon the reasonableness of the proposed cost of money. The Department's proposed ROE was based upon the agency's discounted cash flow (DCF) analysis. US WEST used both the DCF and capital asset pricing models to estimate its ROE. The Commission acted entirely within its legislative powers when it drew upon its wisdom to arrive at the best possible conclusion from the facts presented.

The Commission disagrees with the Department's argument that an ROE close to US WEST's sharing threshold should be avoided so that the Company's incentive plan will not be weakened. The Commission finds that it would be unwise to establish a policy of avoiding proximity to the sharing threshold. The sharing threshold was never meant to lower otherwise properly established rates in EAS proceedings.

III. Base Usage and Stimulation Factors

1. The February 25, 1993 Order

In its February 25, 1993 Order, the Commission approved the lower priced alternative, known as the Community Plus Plan (CPP), proposed by GTE. In approving this plan, the Commission accepted the base usage assumptions made by GTE, as well as GTE's proposed stimulation factor of 6.3.

2. Positions of the Parties

The Department argued that GTE's usage data was based upon toll rates that are significantly different from the rates proposed by GTE for its lower priced alternative. The Department also argued

that GTE's usage data methodology deviated unacceptably from methodologies previously approved by the Commission.

The Department urged the Commission to adopt a stimulation factor of seven to remain consistent with the stimulation factor applied to customer usage in other EAS dockets. The Department argued that GTE had failed to provide sufficient evidence to justify a deviation from a stimulation factor of seven.

US WEST did not address the base usage or stimulation factor issues. GTE argued that there is sufficient data in the record to support the Commission's decisions on these issues. GTE noted that it had responded fully to all information requests submitted by the Department. The Department should have had ample opportunity to discover data supporting GTE's base usage and stimulation factors.

3. Commission Analysis

The Commission does not agree with the Department that the base usage methodology applied in previous dockets such as Monticello must be applied here. In each EAS docket, the Commission must examine the particular facts before it and apply the appropriate cost methodologies for that case. In Monticello, the Commission accepted base usage drawn from the experience of neighboring exchanges offering measured service along with EAS. In this case, where data projections based on actual toll traffic usage for the proposed route are available, the Commission finds that this is the most appropriate base usage methodology.

The Commission likewise did not err when it accepted GTE's proposed stimulation factor of 6.3 for the Company's lower priced alternative. The application of a stimulation factor is a "best guess" of the future effect of a specific change in rates. It is impossible to arrive at one incontestable number for the stimulation factor. Again, the Commission must use its discretion when drawing conclusions from the facts presented.

In this case, a stimulation factor of 6.3 is logical for the lower priced alternative. A customer who chooses the CPP moves from toll rates based on minutes of use to a lower priced alternative also based on per/minute charges. It is unlikely that such a customer's usage would be stimulated as highly as a customer who moves from toll rates to flat-rate EAS (for which a stimulation factor of seven has been consistently applied.) A ten percent reduction from a stimulation level of seven is logical and appropriate for development of CPP rates.

IV. Overall EAS Rates

1. The February 25, 1993 Order

In its February 25, 1993 Order, the Commission approved the following flat-rate EAS rates for Lindstrom and Delano subscribers:

	<u>Residential EAS Rate</u>	<u>Business EAS Rate</u>
Lindstrom	\$32.40	\$64.80
Delano	27.50	55.00

In addition, the Commission approved the CPP, which is a flat monthly rate added to basic rates. Customers choosing CPP can receive calls from the MCA without a toll charge, and can call into the MCA for a \$0.25/minute charge. Lindstrom or Delano subscribers who choose CPP continue to have toll-free EAS service within their respective local calling areas.

2. Positions of the Parties

In its petition for reconsideration, the Department urged the Commission to find that the EAS additives approved for Lindstrom and Delano were unreasonable when compared with other EAS exchanges. In its supporting brief, the Department stated that GTE's usage rates for its lower priced alternative were unreasonable and out of line with the usage rates in other metro exchanges. The Department provided an attachment showing EAS rates for Lindstrom, Delano and other metro EAS exchanges.

GTE stated that it freely acknowledges that rate differences between exchanges exist. In the absence of proof of discrimination or harm to Delano or Lindstrom subscribers, the data showing rates in other exchanges is irrelevant.

3. Commission Analysis

The Department has offered no proof of discrimination or harm to Delano or Lindstrom subscribers from the basic EAS additives or CPP usage rates approved by the Commission. Nor has the Department submitted alternative rates to support the positions it has taken in this proceeding. The Department has failed to show, for instance, that an alternative set of rates could satisfy the Department's concerns regarding income neutrality.

The Department's comparison of GTE's CPP rates to rates for local measured service in other exchanges is inappropriate. CPP is a proposed lower priced alternative to EAS, while local measured service is a generally available tariff offering. In addition, the comparison is inapt because local measured service measures all calls, while CPP only changes toll calls to the MCA to measured charges.

The Department has failed to offer an argument or evidence which justifies reconsideration of overall EAS rates.

V. Conclusion

In its petition for reconsideration the Department has relied upon arguments which have been answered in the February 25, 1993 Order, and in some cases, in previous proceedings. The Commission finds that the EAS and CPP rates for the Delano and Lindstrom exchanges approved in the February 25, 1993 Order are reasonable and acceptable. The Commission will deny the Department's petition for reconsideration in all respects.

ORDER

1. The Department's request for reconsideration dated March 8 and March 18, 1993, is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)